IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 464

GAINESVILLE UTILITIES DEPARTMENT, CITY OF GAINESVILLE, FLORIDA, *Petitioners,*

v.

FLORIDA POWER CORPORATION, *Respondent.*

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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REPLY BRIEF OF PETITIONERS

This reply brief is addressed to two of the major premises on which the Brief in Opposition filed herein by Respondent, Florida Power Corporation, is based:

1. The first is Florida Power's claim that the Fifth Circuit has required only that the Federal Power Commission (Commission) prescribe reasonable compensa-

tion as a condition of the interconnection and not that such compensation must contain an allowance for benefits received as well as reimbursement for costs incurred (see, e.g., Br. in Opp., pp. 2, 11-12). This claim patently misreads the holding of the Court below, as is obvious from (1) the Fifth Circuit's expressed rejection of the Commission's policy of prescribing reasonable compensation based upon proportionate utility responsibility under which Florida Power was to be reimbursed for all costs incurred as a result of the interconnection directed by the Commission (Pet. App. pp. 14a-15a) and (2) the Fifth Circuit's insistence that that policy "really works only one way. The small system receives high benefits and, because of its size, no real obligations. The large system, however, receives no benefits but does incur real, substantial responsibilities. Such imaginary equity is not reasonable compensation." (Pet. App. p. 15a.)

The same misreading of the holding below underlies Florida Power's claim (Br. in Opp., p. 13) that the Petition is premature. While, as Florida Power urges, the Commission has not yet held the further proceedings directed by the Fifth Circuit for fixing compensation in accordance with the principles laid down by that Court, Gainesville's position is that the Fifth Circuit erred in refusing to defer to the Commission's expertise, in rejecting the Commission's policy of prescribing reasonable compensation based on proportionate utility responsibility and, accordingly, in directing such further proceedings. In other words, the Petition brings into question the validity of the principles laid down by the Fifth Circuit for the Commission to follow on remand. And since under Gainesville's view, there is no need for such further proceedings, the Petition clearly is not premature.

2. The second is Florida Power's thesis that the emergency backup service directed by the Commission is "the furnishing of capacity in the state of readiness capable of supplying instantaneously at any instant of the day and night the energy required to protect against loss of a system's largest generator." (See, e.g., Br. in Opp., p. 10.) This thesis is expressly contradicted by the Commission's statement, which it took pains to emphasize, that its order imposed no obligation upon Florida Power to provide any specific firm power service to Gainesville (Pet. App. p. 28a, fn. 4). Rather, under the Commission's order, Florida Power is required to provide emergency backup service to Gainesville only when, as, and if available. As shown in the Petition (at p. 16, fn. 13), emergency service on such a limited basis is wholly adequate for Gainesville's purposes.

The absence of any firm obligation upon Florida Power to provide emergency service to Gainesville relieves Florida Power of any need to have capacity available at all times capable of instantaneously supplying energy in the event of an emergency. This distinguishes the present situation from those referred to by Florida Power (Br. in Opp., pps. 14-16). Each of the situations cited by Florida Power, including that of Southeastern Power Administration, involved a *firm* obligation to provide emergency service; accordingly, a standby demand charge was not only appropriate, but required under standard rate-making principles.

3. The importance of the Commission's decision to the development of interconnected regional electric operations is underlined by the power shortage and "brownouts" which recently hit the Eastern Seaboard as a result of a combination of hot weather and certain

large generators being out of service for maintenance or breakdown. All the East Coast interconnected systems responded by exporting the maximum power possible (to the extent even of cutting back on service in their own territories) to the damaged systems. See *The Wall Street Journal,* September 23, 1970, page 2; September 24, 1970, p. 4; September 25, 1970, p. 4.

Interconnection makes possible such joint action, and the terms for such interconnections are now governed by the Commission's ruling in the instant proceeding that compensation among the connecting utilities should be on the basis of proportionate utility responsibility and not on an evaluation of relative benefits. If the Fifth Circuit decision stands and the matter goes back to the Commission for years of further litigation, no guidelines will exist in the meantime for the determination of the terms and conditions under which utility systems are to be interconnected and existing interconnections enlarged.

For the foregoing reasons, as well as those set out in the Petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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